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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,566	03/15/2004	Frank Semersky	GRMH63-02US	9823
21302 7590 12/05/2007 KNOBLE, YOSHIDA & DUNLEAVY EIGHT PENN CENTER SUITE 1350, 1628 JOHN F KENNEDY BLVD PHILADELPHIA, PA 19103			EXAMINER HARMON, CHRISTOPHER R	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 12/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/800,566

Applicant(s)

SEMERSKY ET AL.

Examiner

Christopher R. Harmon

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10/26/07 has been entered.

The following ground(s) of rejection are applicable to the appealed claims:

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prevot et al (#5,887,739) in view of Krishnakumar et al (#5,908,128).

Prevot et al substantially show the claimed subject matter including selecting a blow-molded PET container having a sidewall with a sidewall 20, base 18, dome 12 with a wide-mouth opening with an upper label bumper 24 and lower label bumper 22; see

figure 1. This container is designed for resistance to ovalization and increased structural strength. Prevot discloses hot filling consumer goods, such as, pickles, applesauce and like food products (col 1 lines 9+). Prevot also discloses that the hot-fill process comprises filling containers with a food at an elevated temperature, sealing the containers and then cooling the containers (col 1 lines 32+). Prevot appears to disclose that the filling is done with a container that has not been heated so it appears that the container is at ambient temperature prior to filling. (col 1 lines 32).

Prevot does not disclose further pasteurizing the filled and capped container or show some of the particulars of the container, such as, vertically spaced grooves in a sidewall, a footed base or crystallinity in excess of 25%. However, Krishnakumar et al. teaches hot filling in combination with pasteurizing a filled container with vertically spaced grooves 131, 137, 139; (figures 3 and 4) a footed base 143 so that the plastic container is able to withstand pasteurization to gain the advantages of plastic over glass (col 1 lines 42+). Krishnakumar also discloses the container has an average crystallinity of up to 30% (col 7 lines 1+).

It would have been obvious to one of ordinary skill in the art at the time of the invention to further pasteurize the hot filled container of Prevot and include vertical grooves and a footed base as well as the crystallinity as claimed as taught by Krishnakumar et al. in order to insure against contamination of the product. Note both hot filling and pasteurization are used for this purpose and well known methods of food packaging to one of ordinary skill.

Regarding the dimensions of claims 20-21, Prevot discloses a 50% opening to sidewall diameter ratio, however states that the dimensions are "By way of example, and not by way of limitation" (column 4, lines 60+) thereby suggests variation.

Krishnakumar teaches a wide-mouth opening of at least about 80% of the side wall cross section. It would have been obvious to one of ordinary skill in the art to use the dimension ratio as taught by Krishnakumar in order to construct a wide-mouth container retaining the desired properties. Regarding certain temperature ranges or time intervals as claimed, the examiner notes that appellant's specification on p. 7 lines 20+ discloses the common pasteurization temperatures to be in the range of 195-210 F for 10 to 20 minutes. The examiner also notes that optimum ranges via experimentation are within the realm of ordinary skill in the art. See *in re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

#### ***Response to Arguments***

4. Applicant's arguments filed 10/26/07 have been fully considered but they are not persuasive. Krishnakumar disclose grooved sidewalls as claimed as noted supra.

#### ***Conclusion***

5. This is a continuation of applicant's earlier application decided by the Board of Patent Appeals on 8/28/07. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP

§ 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

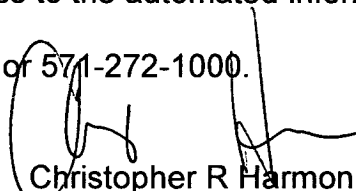
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christopher R Harmon  
Primary Examiner  
Art Unit 3721